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Presentment Date: March 12, 2018
Time: 12:00 PM
Objections Due: March 12, 2018
Time: 11:00 AM

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

CHALEK ASSOCIATES LLC; MORTON J.
CHALEK, in his capacity as Managing Member of
Chalek Associates LLC and as Trustee for the Trust
of Doris Chalek; TRUST OF DORIS CHALEK, in
its capacity as a Member of Chalek Associates LLC;
FRANCES REISS, in his/her capacity as a Member
of Chalek Associates LLC; RICHARD M.
CHALEK, in his capacity as a Member of Chalek

Adv. Pro. No. 10-04680 (SMB)

Associates LLC; DAVID CHALEK, in his capacity as a Member of Chalek Associates LLC; ISABEL CHALEK, in her capacity as a Member of Chalek Associates LLC; MITCHEL CHALEK, in his capacity as a Member of Chalek Associates LLC; JESSICA DECKER, in her capacity as a Member of Chalek Associates LLC; JOHN TZANNES, in his capacity as a Member of Chalek Associates LLC; PETER TZANNES, in his capacity as a Member of Chalek Associates LLC; and ROBIN TZANNES, in his/her capacity as a Member of Chalek Associates LLC,

Defendants.

**APPLICATION FOR THE ISSUANCE OF ORDER
DISMISSING ADVERSARY PROCEEDING WITH PREJUDICE**

1. Plaintiff Irving H. Picard, as trustee (“Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, which has been substantively consolidated with the estate of Bernard L. Madoff, through his attorneys, Baker & Hostetler LLP, submits this application (the “Application”) for the issuance of an order dismissing the above titled proceeding with prejudice.

2. This Application is made pursuant to Local Rule 9074-1(d).

3. The Trustee filed a complaint on December 1, 2010 against Chalek Associates LLC (“Chalek”), Morton J. Chalek, in his capacity as Managing Member of Chalek and Trustee for the Trust of Doris Chalek, and the Trust of Doris Chalek, Frances Reiss, Richard Chalek, David Chalek, Isabel Chalek, Mitchel Chalek, Jessica Decker, John Tzannes, Peter Tzannes, and Robin Tzannes, each in his, her or its capacity as a Member of Chalek (collectively, the “Subsequent Transferee Defendants”). [ECF No. 1]

4. On March 11, 2011, Becker & Poliakoff LLP filed a Notice of Appearance as attorneys in this proceeding. [ECF No. 5]

5. Numerous defendants in adversary proceedings prosecuted by the Trustee against good faith transferees, including Chalek and Subsequent Transferee Defendants, filed motions to dismiss (“Motions to Dismiss”) the complaints filed against them by the Trustee. On June 2, 2015, the Bankruptcy Court granted in part and denied in part the Motions to Dismiss for reasons set forth in its Memorandum Decision Regarding Omnibus Motions to Dismiss (the “Decision”) [ECF No. 10089 in Adv. Pro. No. 08-01789 (SMB)]. As a result of the Decision, the Trustee’s claims against the Subsequent Transferee Defendants were dismissed without prejudice to refiling.

6. Following the Decision, Chalek filed an answer on September 17, 2015. [ECF No. 42]

7. On November 23, 2015, this Court entered an Order Granting Becker & Poliakoff LLP’s Application to Withdraw as Counsel, after which Chalek was represented by Chaitman LLP. [ECF No. 47]

8. On February 23, 2016, Chaitman LLP filed an Application to Withdraw as Counsel, which the Court granted on March 18, 2016. [ECF Nos. 48 and 49]. In the Application to Withdraw as Counsel, attorney Helen Davis Chaitman attached a declaration stating that Chalek was “defunct.” [ECF 48, Exhibit 2]

9. Since that time, Chalek has not obtained new counsel, has not filed any documents with the Court, and has not otherwise appeared in this case. Chalek is a company that may only appear through agents acceptable to the court, who are “attorneys at law, who have been admitted to practice, are officers of the court and subject to its control.” *Eagle Assocs. v. Bank of Montreal*, 926 F.2d 1305, 1308 (2d Cir. 1991); *Omega Consulting v. Farrington Mfg Co.*, 604 F. Supp. 2d 684, 685 (S.D.N.Y. 2009).

10. While Federal Rule of Civil Procedure 41(a)(1) provides that a plaintiff may voluntarily dismiss an action without a court order, the Trustee is unable to do so here because Chalek filed an Answer on September 17, 2015. [ECF No. 42]

11. For the above reasons, the Trustee believes that the proposed order submitted herewith is just and appropriate, and respectfully requests that the Court issue such Order dismissing this adversary proceeding with prejudice.

Respectfully submitted,

Dated: New York, New York
March 2, 2018

Of Counsel:

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